

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA

Plaintiff,

-v-

DAVID CARL LETNER,

Defendant.

**Case No. 3:05-cr-068
(Civil Case No. 3:15-cv-008)**

**Judge Thomas M. Rose
Magistrate Judge Michael R. Merz**

ENTRY AND ORDER OVERRULING LETNER'S OBJECTIONS (Doc. #103) TO THE MAGISTRATE JUDGE'S SUBSTITUTED REPORT AND RECOMMENDATIONS (Doc. # 101); ADOPTING THE MAGISTRATE JUDGE'S SUBSTITUTED REPORT AND RECOMMENDATIONS IN ITS ENTIRETY; DISMISSING LETNER'S § 2255 MOTION (Doc. #97) WITH PREJUDICE; DENYING ANY REQUESTED CERTIFICATE OF APPEALABILITY AND CERTIFYING THAT AN APPEAL WOULD BE OBJECTIVELY FRIVOLOUS

This matter comes before the Court pursuant to Defendant David Carl Letner's ("Letner's") Objections (doc. #103) to Magistrate Judge Michael R. Merz's Substituted Report and Recommendations (doc. #101) regarding Letner's Motion To Vacate (doc. #97). Letner's Motion To Vacate was filed pro se.

Magistrate Judge Merz's Substituted Report and Recommendations recommends that Letner's § 2255 Motion To Vacate (doc. #97) be dismissed with prejudice and that Letner be denied a certificate of appealability. Magistrate Judge Merz also recommends that the Court certify to the Sixth Circuit that any appeal would be objectively frivolous.

This matter was before Magistrate Merz for initial review pursuant to Rule 4(b) of the Rules Governing § 2255 cases. It is, therefore, ripe for decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Letner's Objections to the Magistrate Judge's Substituted Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge's Substituted Report and Recommendations is adopted in its entirety.

Letner's § 2255 Motion To Vacate is dismissed with prejudice because it was filed long after the statute of limitations expired. Further, because reasonable jurists would not disagree with this conclusion and an appeal would not be taken in objective good faith, Letner is denied any requested certificate of appealability. Finally, an appeal of this decision would be objectively frivolous.

DONE and **ORDERED** in Dayton, Ohio, this Fourth Day of March, 2015.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
David Carl Letner at his last address of record